

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Misc. No. 06-003-JJF
)
BEN-CEN INC.,)
)
Defendant.)

**UNITED STATES' MOTION FOR ORDER TO SHOW CAUSE
WHY BEN-CEN, INC. SHOULD NOT BE HELD IN
CONTEMPT AND FOR INCARCERATION AND FINES**

The United States of America, by and through undersigned counsel, pursuant to Fed.R.Civ.P. 37 (b) (2) (D) and 69, moves this Court for an order to show cause why Ben-Cen, Inc. should not be held in contempt and its representative Russell Applegate should not be incarcerated and fined until Ben-Cen, Inc. obeys this Court's Order of February 9, 2006, requiring Ben-Cen, Inc. to comply with the Internal Revenue Summons served upon it on July 28, 2005. In furtherance of this application, the United States alleges as follows:

1. On July 28, 2005, Special Agent Anastasia issued an administrative summons, Internal Revenue Service Form 2039, to Ben-Cen, Inc. in furtherance of his investigation of the president of Ben-Cen, Inc., Russell D. Applegate. Ben-Cen, Inc. did not comply with the summons.
2. On January 4, 2006, the United States filed a Complaint to Enforce the Internal Revenue Summons.
3. On February 8, 2006, this Court held a hearing to allow a representative of Ben-Cen, Inc. to appear to show cause why Ben-Cen, Inc. should not be compelled to obey the

Internal Revenue Summons served upon it on July 28, 2005. Ben-Cen, Inc. Did not make an appearance.

4. On February 9, 2006, this Court ordered Ben-Cen, Inc. to comply with the Internal Revenue Summons no later than February 21, 2006.

5. On February 21, 2006 and February 22, 2006, Russell D. Applegate appeared at the Internal Revenue Service office to produce some, but not all, of the documents responsive to the Internal Revenue Summons. On February 21, 2006, Russell D. Applegate told Special Agent Thomas Anastasia that Ben-Cen, Inc. had records of gross receipts that had not been produced.

6. Ben-Cen, Inc. has not fully complied with the Internal Revenue Summons served upon it on July 28, 2005. Thus, Ben-Cen, Inc. has not complied with the Court's order dated February 9, 2006.

7. In support of this motion, the United States submits a memorandum of law, the Third Declaration of Thomas Anastasia, a proposed order to show cause, and a proposed order of contempt.

WHEREFORE, the United States of America respectfully requests:

1. That this Court direct Ben-Cen, Inc. to appear before the Court at a hearing scheduled for a date certain to show cause, if any, why Ben-Cen, Inc. should not be held in contempt of this Court and why Russell Applegate, president of Ben-Cen, Inc., should not be incarcerated until Ben-Cen, Inc. obeys the Court's February 9, 2006 Order requiring it to obey the Internal Revenue Summons served upon it on July 28, 2005.

2. That this Court adjudge Ben-Cen, Inc. in contempt of this Court's Order of February 9, 2006 and order its president, Russell D. Applegate, incarcerated and order Ben-Cen, Inc. fined \$500.00 per day until such time as Ben-Cen, Inc. complies with that order; and
3. That the Court grant the United States its costs and attorney's fees incurred in this contempt proceeding and such other and further relief as may be deemed just and proper under the circumstances.

COLM F. CONNOLLY,
United States Attorney

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Dated: March 30, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)
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Plaintiff,)
)
v.) Misc. No. 06-003-JJF
)
BEN-CEN INC.,)
)
Defendant.)

ORDER TO SHOW CAUSE

Upon motion and the memorandum of law attached thereto, it is
ORDERED that a representative of Ben-Cen, Inc. appear before the United States
District Court for the District of Delaware, on the _____ day of _____, 2006,
at _____ m., in Courtroom _____, United States Courthouse _____, to
show cause why he should not be held in contempt of this Court's Order of February 9, 2006; it
is further

DONE this _____ day of _____, 2006.

HONORABLE JOSEPH J. FARNAN, JR.
District Judge
United States District Court

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UNITED STATES OF AMERICA,)
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Plaintiff,)
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BEN-CEN INC.,)
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ORDER OF CONTEMPT

This matter having been heard on the application of the United States to adjudge Ben-Cen, Inc. in contempt of court, the Court finds that Ben-Cen, Inc. has willfully and deliberately disobeyed the Court's Order of February 9, 2006, by its failure to comply with the Internal Revenue Summons served upon it on July 28, 2005. It is therefore

ORDERED, ADJUDGED and DECREED that Ben-Cen, Inc. is in contempt of the Court on account of its failure to obey the Order of February 9, 2006, in this cause; and it is further

ORDERED that Russell D. Applegate, President of Ben-Cen, Inc. present himself to the United States Marshal for the District of Delaware, at _____, Wilmington, Delaware, at or before 12:00 o'clock noon on the ____ day of _____, 2006; and it is further

ORDERED that the United States Marshal for the District of Delaware is hereby directed to take into custody the President of Ben-Cen, Inc., Russell D. Applegate, and commit him until such time as he shall purge Ben-Cen, Inc. of contempt by complying with the Court's Order of February 9, 2006 requiring Ben-Cen, Inc. to comply with the Internal Revenue Summons served upon it on July 28, 2005, or until further order of the Court. It is further

ORDERED that the coercive fine in the amount of \$500.00 per day is imposed against Ben-Cen, Inc. to commence on the day following the date of this order, and continuing for each day that Ben-Cen, Inc. continues in its willful disregard of the Order of February 9, 2006. It is further

ORDERED that the United States recover its costs in pursuing this contempt proceeding.

It is further

ORDERED that the Clerk shall distribute conformed copies of this order to the representatives of the parties listed below.

DONE this _____ day of _____, 2006.

HONORABLE JOSEPH J. FARNAN, JR.
District Judge
United States District Court

CERTIFICATE OF SERVICE

I, Kathie Gray, an employee in the Office of the United States Attorney for the District of Delaware, hereby attest under penalty of perjury that on **March 30, 2006**, I electronically filed the foregoing **UNITED STATES' MOTION FOR ORDER TO SHOW CAUSE WHY BEN-CEN, INC. SHOULD NOT BE HELD IN CONTEMPT AND FOR INCARCERATION AND FINES** with the Clerk of the Court using CM/ECF. Notification of such filing will be mailed via United States First Class Mail, postage prepaid to the following non registered participant(s):

Russell D. Applegate
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Wilmington, DE 19804

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